

**COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF TAX APPEALS
FILE NO. K05-S-184**

ALVIN C. TURNER

APPELLANT

V.

ORDER NO. K-19537

**BREATHITT COUNTY PROPERTY
VALUATION ADMINISTRATOR**

APPELLEE

The Kentucky Board of Tax Appeals delegated authority to a hearing officer pursuant to KRS 13B.030. The hearing officer entered a recommended order in compliance with the provisions of KRS 13B.110. No exceptions or objections to the recommended order were filed. The Board has reviewed the record and the recommended order.

The Kentucky Board of Tax Appeals conducted a hearing in this matter on January 31, 2006 and makes the following findings of fact, conclusions of law and recommended disposition.

FINDINGS OF FACT

This assessment appeal is for real property located at 1678 Longs Creek Road, Booneville, Kentucky. The Breathitt County Property Valuation Administrator assessed the property at \$66,100.00. The taxpayer or Appellant values the property at \$30,000.00. The Breathitt County Board of Assessment Appeals valued the property at \$55,000.00. The Appellants filed a timely appeal from the local board with the Kentucky Board of Tax Appeals.

The Appellant offered the following evidence in support of Appellant's appeal:

Mr. Alvin C. Turner appeared as the witness for the Appellant and provided sworn testimony in support of an assessment in the amount of \$30,000.00. The Appellant purchased the property in 1997 for \$ 12,000.00 and after taking possession of the property the Appellant set up a sawmill and cut his house pattern and sold the remaining timber. After the house pattern was cut a five (5) room home was constructed from rough lumber and covered with vinyl siding. The home sits on 41.42 acres and has 1,040 square feet and is figured at \$40.00 per square foot. The Appellant does not agree with the \$40.00 per square foot that was placed on the property in question because the rough lumber that was used. Also the Appellant testified that there was no water or sewer on the property and drinking water had to be purchased.

Mr. Ervin Allen, Breathitt County Property Valuation Administrator provided testimony and agrees that the property in question should be assessed at \$66,000.00 because property in the area is normally figured at \$80,00 per square foot. In his testimony the cost per square was figured at \$40.00 on the property in question due to the rough lumber that was used in construction. Also in Mr. Allen's testimony he agreed to lower the assessed value to \$ 45,000.00 because the sawmill had been removed from the property and should be removed from the tax roll.

It is the finding of this hearing that the Appellant did partially sustain his burden of proof regarding his challenge to the final order of the Breathitt County Board of Assessment Appeals.

Based upon testimony and evidence in the record it is the finding of this hearing officer, Randall Phillips, that the fair cash value of the property in question as of January 1, 2005 is \$42,900.00.

CONCLUSIONS OF LAW

The Kentucky Board of Tax Appeals is vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders and determinations of the Breathitt County Board of Assessment Appeals pursuant to KRS 131.340(1).

The function of the Board is not simply to review the action of the Breathitt County Board of Assessment Appeals, but to try anew the issues as presented. *Jefferson County Property Valuation Administrator v. Oxford Properties, Inc.*, Ky.App., 726 S.W.2d 317, 319 (1987). See KRS 131.340(1).

Section 172 of the Kentucky Constitution mandates that “all property shall be assessed for taxation at its fair cash value, estimated at the price it would bring a fair voluntary sale.”

The choice of the most appropriate and reliable approach to valuation is within the prerogative of the Board. *Jefferson County Property Valuation Administrator*, 726 S.W.2d at 319.

Regardless of the manner or method used by the Property Valuation Administrator or the decision of the Kentucky Tax Board of Appeals, the finding of valuation must be at its fair cash value, estimated at the price it would bring at a fair voluntary sale. *Helman v. Kentucky Board of Tax Appeals*, Ky.App., 554 S.W.2d 889 (1977).

As the party proposing that the Kentucky Board of Tax Appeals set aside the decision of the Breathitt County Board of Assessment Appeals, the Appellants have the burden of proving a lower value. KRS 13B.090(7).

If the property is sold at or near the assessment date in a fair and voluntary sale, the sale price is usually the best evidence of the property's fair cash value. *Sears, Roebuck & Company v. Boone County Board of Assessment Appeals*, Ky.App., 715 S.W.2d 888, 889 (1986).

Based upon the facts as established in this hearing, the hearing officer concludes that the fair cash value of the subject property as of January 1, 2005 is \$42,900.00

RECOMMENDED ORDER

It is recommended that the August 22, 2005 final ruling of the Breathitt County Board of Assessment Appeals be reversed and the real property be assessed at a fair cash value of \$42,900.00 as of January 1, 2005.

Each party shall have fifteen (15) days from the date any recommended order is mailed within which to file exceptions to the recommendations with the agency head. Transmittal of a recommended order may be sent by regular mail to the last known address of the party.

FINAL ORDER

The Kentucky Board of Tax Appeals has considered the record and accepts the recommended order of the hearing officer, and adopts it as the Board's final order. Failure to file exceptions to an administrative hearing officer's recommendations after a hearing constitutes a failure to exhaust administrative remedies and precludes appellate review. *Swatzell v. Natural Resources and Environmental Protection Cabinet*, Ky App 962 SW 2d 866 (1998).

The August 22, 2005 final ruling of the Breathitt County Board of Assessment Appeals is upheld and the real property is to be assessed at a fair cash value of \$42,900.00 as of January 1, 2005.

The following information is provided pursuant to the final order requirements of KRS Chapter 13B:

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing

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court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER
AND MAILING: July 20, 2006**

**KENTUCKY BOARD OF TAX APPEALS
FULL BOARD CONCURRING.**

**NANCY MITCHELL
CHAIR**